

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

PIOTR J. GARDIAS,

No. C04-04086 HRL

Plaintiff,

Consolidated With: C04-04768 HRL
C05-01242 HRL
C05-01833 HRL
C06-04695 HRL

v.

SAN JOSE STATE UNIVERSITY,

**ORDER DENYING PLAINTIFF'S
MOTION FOR JUDGMENT**

Defendant.

[Docket Nos. 194, 196, 198]

On May 21, 2007, plaintiff filed a "Motion for Judgment: Facts to Be Deemed Admitted." He subsequently filed two amendments to that motion. Defendant has not filed any responsive papers, and the time for briefing on the motion is closed. Although the motion was noticed for a July 3, 2007 hearing, the court concludes that the matter appropriately may be determined without oral argument. *See* Civ. L.R. 7-1(b). Upon consideration of the papers presented, the court issues the following order.

In his original motion, plaintiff requested that this court enter judgment in his favor because defendant reportedly failed to respond to his interrogatories. The "interrogatories" in question apparently consisted of several somewhat cryptic questions embedded within a long list of plaintiff's assertions as to certain alleged events. Plaintiff later filed two amended

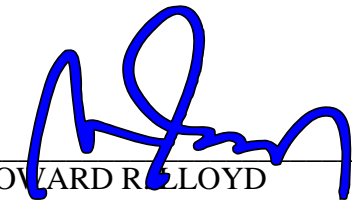
1 motions for judgment in which he now says that his discovery requests were mislabeled as
2 “interrogatories” when they should have been titled “requests for admission.” He requests that
3 the court (a) disregard the questions identified in his motion, as well as all language in his
4 discovery requests indicating that they were intended to be interrogatories; and (b) enter
5 judgment in his favor because defendant failed to say whether or not his assertions as to alleged
6 events are true.

7 Generally, when a party fails to timely respond to requests for admission, the matters
8 requested are automatically deemed admitted. *See* FED.R.CIV.P. 36(a). However, plaintiff
9 apparently did not, at the time he served the discovery in question, make it clear whether
10 defendant should have answered his questions as interrogatories or whether it should have
11 responded to his statements as requests for admissions. The court will not enter judgment here
12 based on plaintiff’s unilateral and after-the-fact clarification that he actually intended the
13 discovery to be requests for admission.

14 Accordingly, plaintiff’s motion for judgment is denied.

15 IT IS SO ORDERED.

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17 Dated: June 28, 2007


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19 HOWARD R. LLOYD
20 UNITED STATES MAGISTRATE JUDGE
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1 A copy of this document will be mailed to:

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5 5:04-cv-4086 Notice has been electronically mailed to:

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